



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

West Central Regional Office

3019 Peters Creek Road, Roanoke, Virginia 24019

Telephone (540) 562-6700, Fax (540) 562-6725

www.deq.virginia.gov

July 11, 2007

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Steven A. Dietrich
Regional Director

Mr. James Schiely
Director of Development
Fairmont Properties, LLC
2618 N. Moreland Blvd.
Cleveland, OH 44120

**RE: VWP General Permit Authorization Number WP4-06-1859
First and Main, Blacksburg, Virginia
Authorization to Proceed Subject to Permit Requirements**

Dear Mr. Schiely:

The Virginia Department of Environmental Quality (DEQ) received a Joint Permit Application (JPA) for the above-referenced project on July 31, 2006. On September 18, 2006, application review was formally suspended for lack of response. The application was reactivated on May 9, 2007. Additional information items required to complete the JPA were submitted May 17, 2007, June 6, 2007, June 12, 2007, and June 27, 2007. DEQ reviewed all of the JPA submittals and deemed the JPA complete on **June 27, 2007**.

Based on DEQ's review, the proposed First and Main project qualifies for the VWP General Permit Number WP4. The enclosed copy of the VWP general permit authorization contains the applicable limits, reporting requirements, and other conditions for authorization.

A Compliance Summary Sheet is attached for your convenience. Please note that you are responsible for compliance with all of the conditions of the authorization applicable to your project scope of work, not just the items on the summary sheet. Please note that proof of purchase of wetland bank credits and a *Final Compensatory Mitigation Plan (Plan)* must be submitted to and approved by DEQ prior to initiating construction activities in permitted impact areas. DEQ has 30-calendar days to review and provide written comments on the plan, or the plan is automatically approved.

Mr. James Schiely
Fairmont Properties, LLC
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This authorization expires seven years from the Authorization Effective date. Please note that this authorization may be continued at the State Water Control Board's discretion, as per the VWP permit regulations. If the authorized activity has not been completed and you wish to obtain a Continuation of Coverage authorization, the permittee must request this continuation no less than 60 days *prior* to the Authorization Expiration date of the original VWP general permit authorization, or the authorization will expire on the original Authorization Expiration date.

Fairmont Properties, Inc. is advised that no work in jurisdictional areas is authorized until the permittee receives a State Program General Permit (SPGP-01) determination, or verification of eligibility under another type of Corps permit, from the U.S. Army Corps of Engineers.

Note that coverage under a Virginia Stormwater Management Permit (VSMP) is required for land disturbing activities affecting more than one acre, including any clearing, grading, or excavation. The VSMP is to be obtained from DCR. Information on the VSMP is available online at "www.dcr.virginia.gov".

If you have any questions about the requirements of the VWP general permit, please contact Jay Roberts at 540-562-6785 or by e-mail at jaroberts@deq.virginia.gov.

Sincerely,



Steven A. Dietrich, P.E.
Regional Director

Enclosures: VWP General Permit WP4-06-1859
Compliance Summary Sheet

cc: ☒ Joe Parrish, Anderson and Associates (w/copies)
Britt Boucher, Foresters, Inc. (w/copies)
Thom Leedom, Blue Ridge Field Office, U.S. Army Corps of Engineers (w/o copies)





COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VWP General Permit No. WP4

VWP General Permit Authorization No. WP4-06-1859

Authorization Effective date: July 11, 2007

Authorization Expiration date: July 10, 2014

VWP GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed.

Permittee: Fairmont Properties, Inc.
Address: 2618 N. Moreland Boulevard, Cleveland, OH 44120
Activity Location: 1600 Block, South Main Street, Blacksburg, Virginia

Activity Description: High density commercial development with impacts to 241 linear feet of stream channel, 0.39 acres of emergent wetland, and 0.52 acres of open water. The authorized impact areas are as listed in the Joint Permit Application. The applicant will mitigate wetlands off-site by purchasing 0.39 acres of wetland mitigation bank credits from Bannister Bend Farms. The applicant will mitigate streams off-site at compensation area designated "Falling Springs Hollow II" located in Montgomery County on a tributary of the South Fork of the Roanoke River. A new open water pond will be developed as an aesthetic amenity and will be adequate to compensate open water impacts. The details of the concept compensation plan are submitted with the Joint Permit Application.

Authorization Note: None

The authorized activity shall be in accordance with this cover page, Part I--Special Conditions, Part II--Compensation, Monitoring, and Reporting, and Part III--Conditions Applicable to All VWP Permits, as set forth herein.

Steven A. Dietrich

Steven A. Dietrich, P.E., Regional Director
Virginia Department of Environmental Quality

7-11-07

Date

Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed according to the information provided in the approved and complete application.
2. Any changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-690-80, or another VWP permit application.
3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.
4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.
5. The activities authorized for coverage under this VWP general permit must commence and be completed within seven years of the date of this authorization.

B. Continuation of coverage. Reapplication for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement (including compensation) has not been completed within seven years of the date of authorization. Notwithstanding any other provision, a request for continuation of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered a new application, and no application fee will be charged. The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.

C. Overall project conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.
2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, floodplain culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5.0% or greater. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.
3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.
4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or for mining activities covered by this general permit, the standards issued by the Virginia Department of Mines, Minerals and Energy that are effective as those in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.
6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.
8. No machinery may enter flowing waters, unless authorized by this VWP general permit.
9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.
10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of permitted activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.
11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their original contours within 30 days following the construction at that stream segment, and the banks seeded or planted with the same vegetation cover type originally present along the streambanks, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.
12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, restored within 30 days following removal of the stockpile, and restored with the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.
13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.
15. The permittee shall conduct activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or other interested and affected agencies and shall ensure that all contractors are aware of the time-of-year restrictions imposed.
16. Water quality standards shall not be violated as a result of the construction activities, unless allowed by this permit authorization.
17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

D. Road crossings.

1. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction contours and elevations in surface waters must be bridged or culverted to maintain surface flows.
2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.
2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.
3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

F. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.
4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.
5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.
6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.
7. No material removed from the stream bottom shall be disposed of in surface waters, unless authorized by this permit.

G. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.
2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.
3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the DEQ shall be notified immediately.
4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.
5. Double handling of dredged material in state waters shall not be permitted.
6. For navigation channels the following shall apply:
 - a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.
 - b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.
7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.
8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.
9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, and shall be properly stabilized prior to placing the dredged material within the containment area.
 11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.
- H. Stormwater management facilities.
1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.
 2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.
 3. Maintenance activities within stormwater management facilities shall not require additional permit authorization or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.

Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide appropriate and practicable compensation for all impacts meeting the conditions outlined in this VWP general permit.
2. Compensation options that may be considered under this VWP general permit shall meet the criteria in 9 VAC 25-690-70.
3. The site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site for the approved project. A site change will require a modification to the authorization.
4. For compensation involving the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage or of the fund contribution has been submitted to and received by DEQ.
5. All aspects of the compensation plan shall be finalized, submitted, and approved by the board prior to a construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Deviations from the approved plan must be submitted and approved in advance by the board.
6. The final wetlands compensation plan shall include:
 - a. The goals and objectives of the plan in terms of replacement of wetland acreage and functions, by wetland type;
 - b. Location map, including latitude and longitude (to the nearest second) at the center of the site;
 - c. Summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;
 - d. Grading plan with existing and proposed elevations at one-foot or less contours;
 - e. Schedule for compensation site construction, including sequence of events with estimated dates;
 - f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a wet year, and a dry year;
 - g. Groundwater elevation data for the site, or the location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;
 - h. Design of water control structures;
 - i. Planting scheme and schedule, indicating plant species, zonation, and acreage of each vegetation type proposed;

- j. An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods of removal, and the control of such species;
 - k. Erosion and sedimentation control plan;
 - l. A soil preparation and amendments plan addressing both topsoil and subsoil conditions;
 - m. A discussion of structures and features considered necessary for the success of the site;
 - n. A monitoring plan, including success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations and monitoring wells, sampling points, and, if applicable, reference wetlands;
 - o. Site access plan;
 - p. The location and composition of any buffers; and
 - q. The mechanism for protection of the compensation area(s).
7. The final stream compensation plan shall include:
- a. The goals and objectives of the compensation plan in terms of replacement of stream functions and water quality benefits;
 - b. A location map, including latitude and longitude (to the nearest second) at the center of the site;
 - c. An evaluation, discussion, and plan sketches of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);
 - d. The identification of existing geomorphological stream type being impacted and proposed geomorphological stream type for compensation purposes;
 - e. Detailed design information for the proposed restorative measures, including geomorphological measurements and reference reach information as appropriate;
 - f. Riparian buffer plantings, including planting scheme, species, buffer width;
 - g. Livestock access limiting measures, to the greatest extent possible;
 - h. A site access plan;
 - i. An erosion and sedimentation control plan, if appropriate;

- j. An abatement and control plan covering all undesirable plant species, listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods for removal, and the control of such species;
 - k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;
 - l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams;
 - m. The mechanism for protection of the compensation area; and
 - n. Plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross-section sketches of the proposed compensation stream.
8. For final wetland or stream compensation plans, the vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.
9. The final wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation sites(s) to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensation area with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval.
10. All work in impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.
11. DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation site(s).
12. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final wetlands or stream compensation plan(s).
13. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.
14. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

15. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the region's killing frost-free growing season, as defined in the soil survey for the locality of the compensation site or the NRCS WETS table, measured in consecutive days under typical precipitation conditions, and as defined in the water budget of the final compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.
16. The wetland plant community shall be considered established according to the performance criteria specified in the final compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:
 - a. Species composition shall reflect the desired plant community types stated in the final wetland compensation plan by the end of the first growing season and shall be maintained through the last monitoring year.
 - b. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover, by the end of the first growing season and shall be maintained through the last monitoring year.
17. Undesirable plant species shall be identified and controlled as described in the undesirable plant species control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by areal coverage on wetland or stream compensation sites. The notification shall include the methods of removal and control, and whether the methods are successful.
18. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined, and a corrective action plan shall be submitted to DEQ for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by DEQ. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year, or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for DEQ approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).
19. The surveyed wetland boundary for the wetlands compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

20. Herbicides or algicides shall not be used in or immediately adjacent to the wetlands or stream compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by DEQ in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall document the preexisting conditions, activities during construction, and post-construction conditions. Monitoring shall consist of one of the following options:
 - a. Photographs shall be taken during construction at the end of the first, second, and third months after commencing construction, and then every six months thereafter for the remainder of the construction project. Photos are not required during periods of no activity within impact areas.
 - b. An ortho-rectified photograph shall be taken by a firm specializing in ortho-rectified photography prior to construction, and then annually thereafter, until all impacts are taken. Photos shall clearly show the delineated surface waters and authorized impact areas.
 - c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months after commencing construction, and then every six months thereafter, for the remainder of the construction activities. Narratives are not required during periods of no activity within the impact areas.
2. As part of construction monitoring, photographs taken at the photo stations or the narrative shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; surface water discharges from the site; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.
3. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.
4. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.
 - a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

- b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.
- c. Temperature, pH and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Wetland compensation site monitoring.

- 1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.
- 2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.
- 3. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by DEQ. In all cases if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.
- 4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following DEQ approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.
- 5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.
- 6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.
- 7. The presence of undesirable plant species shall be documented.
- 8. All wetland compensation monitoring reports shall be submitted in accordance with 9 VAC 25-690-100 Part II E 6.

D. Stream compensation, restoration, and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.
2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.
3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.
4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank, heavy equipment shall be authorized for use within the stream channel.
5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.
6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.
7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise determined by DEQ. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.
8. All stream compensation monitoring reports shall be submitted in accordance with 9 VAC 25-690-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate DEQ office. The VWP general permit authorization number shall be included on all correspondence.
2. DEQ shall be notified in writing at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include a projected schedule for initiation and completion of work at each permitted impact area.

3. Construction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes place, unless otherwise specified below. The reports shall include the following, as appropriate:
 - a. For each permitted impact area, a written narrative stating whether work was performed during the monitoring period, and if work was performed, a description of the work performed, when the work was initiated, and the expected date of completion.
 - b. Photographs labeled with the permit number, the photo station number, the photo orientation, the date and time of the photo, the name of the person taking the photograph, and a brief description of the construction activities. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in a permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration. The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions.
 - c. Summary of activities conducted to comply with the permit conditions.
 - d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.
 - e. Summary of anticipated work to be completed during the next monitoring period, and an estimated date of construction completion at all impact areas.
 - f. Labeled site map depicting all impact areas and photo stations.
4. DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.
5. DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.
6. All compensation monitoring reports shall be submitted annually by December 31, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit.
 - a. All wetland compensation monitoring reports shall include, as applicable, the following:
 - (1) General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.
 - (2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.
 - (3) Description of monitoring methods.
 - (4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

- (5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.
 - (6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.
 - (7) Photographs labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.
 - (8) Discussion of wildlife or signs of wildlife observed at the compensation site.
 - (9) Comparison of site conditions from the previous monitoring year and reference site.
 - (10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.
 - (11) Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.
- b. All stream compensation monitoring reports shall include, as applicable, the following:
- (1) General description of the site including a site location map identifying photo stations and monitoring stations.
 - (2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.
 - (3) Description of monitoring methods.
 - (4) An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.
 - (5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.
 - (6) A discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.
 - (7) Documentation of undesirable plant species and summary of abatement and control measures.
 - (8) A summary of wildlife or signs of wildlife observed at the compensation site.
 - (9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by DEQ in the final compensation plan.

7. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by DEQ.
8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.
9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.
10. Submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP General Permits

- A. Duty to comply. The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions. VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination for cause, VWP general permit authorization revocation, or denial of a continuation of coverage request.
- B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.
- C. Reopener. This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and thereby constitute cause for VWP general permit authorization revocation and reissuance.
- D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.
- E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property, or exclusive privileges, nor does it authorize injury to private property or invasion of personal property rights, nor infringement of federal, state or local laws or regulations.
- F. Severability. The provisions of this VWP general permit authorization are severable.
- G. Right of entry. The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances to enter the permittee's property, public or private, and have access to, inspect and copy records that must be kept as part of the VWP general permit conditions; to inspect facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.
- H. Transferability of VWP general permit authorization. This VWP general permit authorization may be transferred to another person by a permittee when all of the criteria listed below are met. On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.
 - 1. The current permittee notifies the board of the transfer of the title to the facility or property.

2. The notice to the board includes a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the current permittee will retain such responsibility, coverage or liability, including liability for compliance with the requirements of enforcement activities related to the permitted activity.
 3. The board does not notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit authorization within 15 days.
- I. Notice of planned change. Authorization under the VWP general permit may be modified subsequent to issuance in one or more of the cases listed below. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.
1. The permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully compensated.
 2. The project results in less wetland or stream impacts, in which case, compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.
 3. There is a change in the project plans that does not result in a change in project impacts.
 4. There is a change in the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use are met, as detailed in 9 VAC 25-210-115 F.
 5. Typographical errors need to be corrected.
- J. VWP general permit authorization termination for cause. This VWP general permit authorization is subject to termination for cause by the board after public notice and opportunity for a hearing. Reasons for termination for cause are as follows:
1. Noncompliance by the permittee with any condition of the VWP general permit authorization;
 2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
 3. The permittee's violation of a special or judicial order; and
 4. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by a VWP general permit authorization planned change or termination for cause.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9 VAC 25-690-50 A and all compensatory mitigation have been completed or when the authorized impacts will not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. When submitted for project completion, the termination by consent shall constitute a notice of completion in accordance with 9 VAC 25-210-130. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

- L. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.
- M. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.
- N. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.
- O. Duty to provide information.
 - 1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking and reissuing and terminating the VWP permit authorization, or to determine compliance with the VWP permit authorization. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
 - 2. Plans, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.
- P. Monitoring and records requirements.
 - 1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
 - 2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
 - 3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
 - 4. Records of monitoring information shall include, as appropriate:
 - a. The date, exact place and time of sampling or measurements;
 - b. The name of the individuals who performed the sampling or measurements;
 - c. The date and time the analyses were performed;
 - d. The name of the individuals who performed the analyses;

- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

Q. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

- 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
- 2. Excavate in a wetland;
- 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
- 4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.



COMMONWEALTH of VIRGINIA

L. Preston Bryant, Jr.
Secretary of Natural Resources

Marine Resources Commission

2600 Washington Avenue
Third Floor
Newport News, Virginia 23607

Steven G. Bowman
Commissioner

August 29, 2006

James Schiely
C/o Joe Parrish
100 Admoree Street
Blacksburg, VA 24060

RE: VMRC #06-1859

Dear Mr. Schiely:

We have received your application seeking authorization to impact 237 linear feet of intermittent streams and 0.181 acres of non-tidal wetlands on property draining to Cedar Run in the City of Blacksburg in Montgomery County.

Based upon review of your request and associated documents, your proposed project does not fall within the jurisdiction of the Marine Resources Commission, therefore, no authorization will be required from this agency.

For your information, however, you may need authorization from the U. S. Army Corps of Engineers, Norfolk District, 803 Front Street, Norfolk, Virginia 23510, prior to commencing your project. Your application is currently being processed by the Corps.

If we may be of further assistance, please do not hesitate to call on us.

Sincerely,

A handwritten signature in black ink, appearing to read "Traycie L. West".

Traycie L. West
Environmental Engineer

TLW/moj
HM
Cc: Applicant

An Agency of the Natural Resources Secretariat

Web Address: www.mrc.virginia.gov

Telephone (757) 247-2200 (757) 247-2292 V/TDD Information and Emergency Hotline 1-800-541-4646 V/TDD